25-952

In the United States Court of Appeals
for the Second Circuit

JENNIFER VITSAXAKI
Plaintiff - Appellant,

v.

SKANEATELES CENTRAL SCHOOL DISTRICT; SKANEATELES CENTRAL SCHOOLS' BOARD OF EDUCATION,
Defendants – Appellees.

On Appeal from the United States District Court
for the Northern District of New York, No. 5:24-cv-00155

BRIEF OF AMICUS CURIAE STATE OF MONTANA AND 21 OTHER STATES AND THE ARIZONA LEGISLATURE SUPPORTING PLAINTIFF-APPELLANT AND REVERSAL

AUSTIN KNUDSEN
Attorney General of Montana
CHRISTIAN B. CORRIGAN
Solicitor General
MONTANA DEPARTMENT OF JUSTICE
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-2026
christian.corrigan@mt.gov

Table of Contents

Table of Authorities

Cases

Statutes

Other

AMICI'S IDENTITY, INTEREST, AND AUTHORITY TO FILE

The States of Montana, Alabama, Alaska, Arkansas, Florida, Georgia, Idaho, Indiana, Kansas, Mississippi, Missouri, Louisiana, Nebraska, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Virginia, West Virginia, and the Arizona Legislature file this amicus brief pursuant to Fed. R. App. Proc. 29(a)(2). States are entrusted with protecting fundamental rights. Here, amici seek to ensure that parents retain their right to direct the upbringing of their minor children—a right the Supreme Court has described as "essential" and "far more precious … than property rights." *Stanley v. Illinois*, 405 U.S. 651 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 299 (1923) and *May v. Anderson*, 345 U.S. 528, 533 (1953)).

BACKGROUND

A YOUNG GIRL IS SECRETLY TRANSITIONED

In 2020, Plaintiff Jennifer Vitsaxaki sent her then-12-year-old daughter ("Jane") to Skaneateles Middle School in Skaneateles Central School District. Mrs. Vitasaxaki entrusted the school to provide Jane with an education and to share with her any information necessary to help Jane. After her daughter showed signs of struggle, Mrs. Vitsaxaki reached out to Jane's teachers and school staff, repeatedly asking for their observations of Jane that could explain her daughter's struggles and enable Mrs. Vitsaxaki to help her. Compl., Dkt. 1 ¶ 1. Instead of sharing information, district employees hid the truth: The school district

had begun socially transitioning her daughter, and was referring to Jane with a boy's name and with third-person plural pronouns. The school psychologist even told school staff to keep the social transition a secret from Jane's mother. True to this instruction, they reverted to using the daughter's given name and female pronouns when assuring Mrs. Vitsaxaki that there was nothing to report. The psychologist began conducting regular meetings with Jane, and the school provided her with resources for medical transition—hiding it all from Jane's mother. *Id.* ¶¶ 2-3.

Mrs. Vitsaxaki desperately sought to learn why her daughter was resisting going to school, was increasingly negative about herself, and was suffering anxiety. Mrs. Vitsaxaki even took a job as a school bus driver—at Jane's request—to try to get answers. Compl., Dkt. 1 ¶ 4. Finally, at the urging of a teacher who could no longer stand by silently, the principal informed Mrs. Vitsaxaki that the school had been socially transitioning Jane and treating her as a boy. Mr. and Mrs. Vitasaxaki directed the school district to stop this treatment and sought to understand what had happened through open communication. The school district informed them that district policy required employees to deceive them. *Id.* ¶¶ 4-5. This district's Policy 7552, entitled "Student Gender Identity" and adopted in 2018, instructed school staff to use the name and pronouns that correspond to the gender identity the student "consistently asserts at school" and to forebear from sharing "this

confidential information" unless the student specifically decided "when, with whom, and how much to share." Compl. Dkt. 1 ¶¶ 200-201.

Mrs. Vitsaxaki's daughter switched to online schooling for the remainder of the school year. But despite assurances of more open communication going forward, the school district's deception continued. Staff continued to refer to Jane with a masculine name and third-person plural pronouns. Compl., Dkt. 1 ¶¶ 155-156, 168. Left with no other options, Mrs. Vitsaxaki withdrew Jane from Skaneateles Central School District. Since enrolling Jane in a private school, Mrs. Vitsaxaki has observed improvement in Jane's demeanor, morale, health, and outlook. Jane has not expressed a desire to be called by a boy's name or to use gender-neutral pronouns. *Id.* ¶¶ 187, 192-193.

SECRETLY TRANSITIONING A CHILD IS JUST A "CIVILITY CODE"

On January 31, 2024, Mrs. Vitsaxaki filed suit against the school district, asserting violations of the Free Exercise Clause and both substantive and procedural violations of the Due Process Clause. Mrs. Vitsaxaki is a devout member of the Greek Orthodox Church. She strives to live out her Christian faith daily by incorporating it into her work, home, and family life. She is committed to raising her children in the Greek Orthodox faith. And, as relevant here, her faith teaches that God created two sexes, male and female; these two sexes are a core part of God's intended design for humanity; each of us is born with a fixed

biological sex that is a gift from God; it is not an arbitrary imposition subject to change.

Mrs. Vitsaxaki accordingly alleged that the school district infringed upon her free exercise of her chosen religion and her fundamental right to control various aspects of her child's upbringing, healthcare, and education. When the school district applied its policy of referring to her daughter by a boy's name and gender-neutral pronouns without her knowledge or consent, it burdened her ability to direct the faith-based upbringing and education of her child and to counteract the school district's message contrary to her belief that each of us is born with a fixed biological sex that is not subject to change. She sought declaratory relief declaring the school district's policy unconstitutional on its face and as applied to her as well as monetary damages. *See generally* Compl., Dkt. 1.

The school district moved to dismiss, arguing that Mrs. Vitsaxaki lacks standing to seek declaratory relief since she withdrew her daughter from the school district and that she failed to plausibly allege her constitutional claims on the basis of the district's policy. The district court granted the school district's motion.

The court held that Mrs. Vitsaxaki lacked standing to pursue declaratory relief because she had removed her daughter from the school district and did not allege any future harm that she anticipated from the district. Mem. & Order, Dkt. 32 at 15. The court applied rational basis

scrutiny to reject Mrs. Vitsaxaki's free exercise claim, holding that the policy is rationally related to the school district's interest in promoting a safe learning environment for its students. *Id.* at 23-24. The court also rejected Mrs. Vitsaxaki's due process claims. Despite recognizing that the Supreme Court has "repeatedly held that parents have a liberty interest in the care, custody, and control of their children," *id.* at 25 (internal quotation marks omitted), the court relied on Second Circuit precedent holding that there is not a parental right "to direct *how* a public school teaches their child," *id.* at 26 (internal quotation marks omitted).

Without citing any legal authority, the district court asserted "a Policy that permits students to use preferred names and pronouns cannot be said to promote or endorse a religious message nor establish a particular religious practice." *Id.* at 20. It characterized Mrs. Vitsaxaki's complaint as alleging that "the choices available to students who choose to take advantage of the Policy runs afoul of her own religious beliefs." *Id.* at 20. It characterized the policy as "operat[ing] more like a civility code that extends the kind of decency students should expect at school." *Id.* at 27. The court then derided Mrs. Vitsaxaki's allegations that the district violated her fundamental right to make healthcare decisions for her daughter as mere "labels" and characterized the district's clandestine actions as "the kind of mental health resources traditionally offered to adolescents in public schools." *Id.* at 28. The district court further found that Mrs. Vitsaxaki had no "right to information" necessary to exercise

her parental right to raise and educate her daughter as she saw fit. *Id.* at 28. Offering little consolation, the court observed that Mrs. Vitsaxaki "remained free to exercise her parent rights at home," *id.* at 29, failing to explain how Mrs. Vitsaxaki could do when the district had hidden its contrary messaging.

The court again applied rational basis scrutiny to the due process claims and found that the policy passed review on the grounds that the district's desire to maintain a safe learning environment was a compelling justification for the policy. *Id.* at 30-32.

SUMMARY OF ARGUMENT

Parents the world over tell their children: "if a grownup tells you not to tell mom and dad, telling mom and dad is the first thing you should do." As our constitutional system (and common experience) recognizes, this is because "the natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. 584, 602 (1979). Asking a child to conceal important life changes from his or her parents introduces mistrust and anxiety into the parent-child relationship, leading to worsening mental health for the child—the very result Jane experienced here. *See* Compl., Dkt. 1 ¶ 220.

Thus, absent a reason to believe a parent is unfit, courts presume the state may not "inject itself into the private realm of the family [and] question the ability of that parent to make the best decisions concerning

the rearing of [parents'] children." *Troxel v. Granville*, 530 U.S. 57, 68-69 (2000) (plurality op.). But the district court ignored all of this and decided that a state entity socially transitioning a 12-year-old child and hiding that information from her concerned mother was merely extending "decency" to that child. Mem. & Order, Dkt. 32 at 27. If it were a matter of mere decency, there would have been no reason to hide that information from Jane's mother. State and federal rules of evidence allow deceptive statements made after a wrongful act to be considered as evidence of a guilty conscience. *See, e.g.*, *United States v. Levy*, 594 F.Supp. 2d 427, 437 (S.D.N.Y. 2009). The decent and lawful thing to do was to share with Mrs. Vitsaxaki—the person who knows and loves her daughter most—that the school was treating her daughter as a boy at her request and what they had observed of her struggles.

The policy the school district relied upon to keep Mrs. Vitsaxaki in the dark was not a "civility code" protecting students' "decency." The district used the policy as a cover to keep her child in its clutches through fraudulent representations. The policy denied Mrs. Vitsaxaki her right to freely exercise her religion and her rights to substantive and procedural due process. Parents like Mrs. Vitsaxaki have a legal duty as well as a biological imperative to keep their children safe. Correspondingly, the constitution recognizes that parents have a fundamental right to direct the upbringing of their children and to instill in them moral standards and beliefs.

The U.S. Constitution has offered strong protection for parental rights since our nation's founding. Those rights are not granted by any man-made institutions or documents; rather, they are natural rights that have been the subject of philosophical thought at least since the eighteenth century, with roots dating to Greco-Roman times. Parental rights are not cast aside "[s]imply because the decision of a parent [about a child's medical treatment] is not agreeable to [the] child or because it involves risks." *See Parham*, 442 U.S. at 603. *See* Section I.

Here, however, the school district decided that it knew better than Jane's mother when it secretly began calling Jane a masculine name and using third-party plural pronouns. Doing so not only deepened Jane's distress, it denied Mrs. Vitsaxaki the right to direct Jane's upbringing. It required Mrs. Vitsaxaki to choose between her right to public education for her daughter and her right to exercise her religious beliefs freely. It denied Mrs. Vitsaxaki's due process rights by withholding information in response to her repeated requests to find the cause of her child's ongoing mental distress. The district's actions are not justified because Jane requested the use of the name and pronouns or because it thought Mrs. Vitsaxaki wasn't supportive enough of Jane's gender transition. Nor are they justified by the number of school districts across the nation that have adopted similar policies. *See* Section II.

ARGUMENT

I. Parents have a fundamental right to direct the care and custody of their children.

The right of parents to direct the care and custody of their children is perhaps the oldest of the fundamental liberty interests recognized by the [Supreme] Court." *Troxel*, 530 U.S. at 65 (citing *Meyer*, 262 U.S. at 399). But the right preexists the constitution itself and is an intrinsic human right.

A. Parental rights are among the longstanding rights protected by the Due Process Clause.

Start with the basics. States may not "deprive any person of … liberty … without due process of law." U.S. Const. amend. XIV. This Due Process Clause "provides heightened protection against government interference with certain fundamental rights and liberty interests," *see Troxel*, 530 U.S. at 65 (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997))—including those unenumerated rights that are "deeply rooted in this Nation's history and tradition" and "implicit in the concept of ordered liberty," *see Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228, 2242 (2022) (quoting *Glucksberg*, 521 U.S. at 721). To conduct this inquiry, courts must "engage[] in a careful analysis of the history of the right at issue." *Id.* at 2246.

Here, the district court did not engage in any analysis of the history of the parental liberty interests at stake. Instead, it misconstrued Mrs.

Vitsaxaki's complaint as seeking to "challenge the manner of instruction employed by the district," and what "what his or her child will or will not be taught," Mem. & Order, Dkt. 32 at 26. That description is wholly detached from Mrs. Vitsaxaki's actual claims, and mocks their seriousness. While this Court could remand to allow the court to undertake the historical analysis of her claimed parental rights, the more efficient approach would be for this Court to undertake that analysis.

To that end, it is important that the right of parents to direct the care and custody of their children "is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court." *Troxel*, 530 U.S. at 65 (citing *Meyer*, 262 U.S. at 399). But parents' liberty interest in the care and custody of their minor children has a much earlier origin than *Meyer*. That interest is "older than the Bill of Rights" and "has its source … not in state law, but in intrinsic human rights." *See Smith v. Org. of Foster Families for Equal. & Reform*, 431 U.S. 816, 845 (1977); *see also Meachum v. Fano*, 427 U.S. 215, 230 (1976) (Stevens, J., dissenting) ("[N]either the Bill of Rights nor the laws of sovereign States create the liberty which the Due Process Clause protects.").

During the late-eighteenth and early-nineteenth century, Sir William Blackstone's writings greatly influenced the American common-law understanding of the reciprocal rights and duties that the natural law imposes on parents and children. *See* John Witte, Jr., *The Nature of Family, The Family of Nature: The Surprising Liberal Defense of the*

Traditional Family in the Enlightenment, 64 Emory L.J. 591, 598, 658–62 (2015). Blackstone defined the parent-child relationship as "the most universal relation in nature" and explained that parents have a duty to provide for their children's maintenance, protection, and education. 1 William Blackstone, *Commentaries on the Laws of England* *446 (1753). While recognizing that municipal laws reinforce these duties, he argued that "Providence has done it more effectually … by implanting in the breast of every parent that natural … affection, which not even the deformity of person or mind, … wickedness, ingratitude, … [or] rebellion of children[] can totally suppress or extinguish." *Id.* *447. Parental authority stems from parents' duties to provide for their children's maintenance, protection, and education and includes, as a necessary incident, the authority to perform those duties without unreasonable state interference. *See id.* *452–53.

Blackstone was not writing on a blank slate. Instead, he drew from influential natural law thinkers like Samuel Pufendorf and Baron Montesquieu. *See id.* *447 (arguing, by reference to Pufendorf, that parents' duty to "provide for the *maintenance* of their children is a principle of natural law … laid on them not only by nature herself, but by their own proper act[] in bringing them into the world"); *see id.* ("[T]he establishment of marriage in all civilized states is built on this natural obligation for the father to provide for his children." (citing 2 Baron De Montesquieu, *The Spirit of the Laws* 69 (1749))). Similar views on the

parent-child relationship can be found in the earlier writings of Hugo Grotius, John Locke, Jean-Jacques Burlamaqui, and others. *See, e.g.*, 2 Hugo Grotius, *The Rights of War and Peace* 208–12 (Richard Tuck ed., 2005) (1625) ("Children need to be educated and conducted by the Reason of another. And none but Parents are naturally [e]ntrusted with this Charge."); John Locke, *The Two Treatises of Civil Government* 243 (Thomas Hollis ed., A. Millar et al.) (1689) ("The *power* … *that parents have* over their children arises from that duty which is incumbent on them to take care of their offspring during the imperfect state of childhood." (cleaned up)); Jean-Jacques Burlamaqui, *The Principles of Natural and Politic Law* 61 (1747) (arguing that "Providence … has inspired parents with that instinct or natural tenderness … for the preservation and good of those whom they have brought into the world").

State courts have leaned on Blackstone's collected wisdom to resolve questions about the nature of parental rights and duties—including parent-school disputes and parental support cases—thus incorporating these natural law conceptions of parental rights into the corpus of early American common law. *See* Witte, Jr., *Nature of Family*, *supra* at 597–98 (arguing that the views of the Enlightenment thinkers like Grotius, Pufendorf, Locke, Montesquieu, and others "penetrated deeply into the Anglo-American common laws of the eighteenth and nineteenth centuries, courtesy especially of William Blackstone"); *see also, e.g.*, *Sch. Bd. Dist. No. 18 v. Thompson*, 103 P. 578, 581–82 (Okla.

1909) (parents may exclude their child from some courses of study because, under the common law, they retained authority "sufficient to keep the[ir] child in order and obedience" and "the common law presum[ed] that the[ir] natural love and affection … for their children would impel them to faithfully perform th[e] duty [to provide an education]" (citing Blackstone, *Commentaries*, *supra* at *451–53)); *Furman v. Van Sise*, 56 N.Y. 435, 439–40 (1874) (grounding parents' right to the services of their children in their natural law obligation to "maintain, educate and take care of [their minor] children," which entitles parents to "the custody and control of such children" and "to the services of the children").[1]

B. Modern jurisprudence recognizes the primacy of parental rights among those protected by the Due Process Clause.

A century ago, the Supreme Court grounded the common-law right of parents to direct the care and custody of their minor children in the "liberty" protected by the Fourteenth Amendment's Due Process Clause. *See Meyer*, 262 U.S. at 399–400 (Due Process Clause secures parents' right to "establish a home and bring up children"). In doing so, the Court

---

[1] *See also, e.g.*, *Porter v. Powell,* 44 N.W. 295, 297 (Iowa 1890) (parents' "right to exercise care, custody and control over the[ir] child" arises out of their natural law duty to "provide for the maintenance of their children" (citing Blackstone, *Commentaries*, *supra* at *446)); *Finch v. Finch*, 22 Conn. 411, 415 (1853) (same); *Jenness v. Emerson*, 15 N.H. 486, 488–89 (1844) (same); *Jones v. Tevis*, 14 Ky. (4 Litt.) 25, 27 (1823) (same).

drew on "the natural duty of the parent"—which "[c]orrespond[ed] to the right of control"—"to give his children education suitable to their station in life." *Id.* at 400. And over the last century, the Court has reaffirmed that right time and again. *See Pierce v. Soc'y of Sisters*, 268 U.S. 510, 534–35 (1925) ("liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control"); *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944) ("It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."); *Stanley*, 405 U.S. at 651 (raising one's children has been treated as an "essential" and "basic civil right[] of man" (citation and quotation marks omitted)); *see Dobbs*, 142 S. Ct. at 2257 (identifying, among a list of longstanding rights, "the right to make decisions about the education of one's children"). A century after *Meyer*, this much is clear: "Th[e] primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition." *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972).

That parental right is rooted in part in the commonsense recognition "that parents possess what a child lacks in maturity, experience, and capacity for judgment required for making life's difficult decisions." *Parham*, 442 U.S. at 602. The law thus makes a basic assumption about children as a class: "[It] assumes that they do not yet

act as adults do, and thus [it] act[s] in their interest by restricting certain choices that … they are not yet ready to make with full benefit of the costs and benefits attending such decisions." *Thompson v. Oklahoma*, 487 U.S. 815, 826 n.23 (1988). That basic assumption justifies many restrictions on minor children's rights, including their right to vote, *see* U.S. Const. amend. XXVI, enlist in the military without parental consent, *see* 10 U.S.C. § 505, or to drink alcohol, *see, e.g.,* 23 U.S.C. § 158. And that same principle is traditionally at work in public schools, which routinely require parental consent before a student can receive medication or participate in certain school activities.

This authority is based also—and perhaps more importantly—on the idea that parents are best suited to "prepar[e their children] for obligations the state can neither supply nor hinder." *Prince*, 321 U.S. at 166; *see also Pierce*, 268 U.S. at 535 (declaring that "[t]he child is not the mere creature of the State," but "those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations"). Indeed, Blackstone explained that "the *power* of parents over their children is derived from … their duty." *Commentaries*, *supra* at *452. And Blackstone's understanding of the reciprocal rights and duties that the natural law imposes on parents and children permeates the Court's decisions in cases like *Meyer*, *Pierce*, *Prince*, *Yoder*, *Parham*, and *Troxel*. *See, e.g.*, *Meyer*, 262 U.S. at 400 ("natural duty of the parent"—which "[c]orrespond[s] to the right of

control"—is "to give his children education suitable to their station in life"); *Pierce*, 268 U.S. at 535 (parents have "the right" and "high duty" to prepare [their children] "for additional obligations");[2] *Prince*, 321 U.S. at 166 ("[C]ustody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.").

Of course, parental authority is not absolute. Courts have recognized that parents have no license to abuse or neglect their children. *Parham*, 442 U.S. at 602–04. Nor does the parental relationship give parents the right to disregard lawful limitations on the use of medical procedures or drugs. *See Doe v. Pub. Health Tr.*, 696 F.2d 901, 903 (11th Cir. 1983) ("John Doe's rights to make decisions for his daughter can be no greater than his rights to make medical decisions for himself."). Relatedly, some parental decisions about their child's medical care may be "subject to a physician's independent examination and medical judgment." *Parham*, 442 U.S. at 604. But even then, parents "retain a substantial, if not the dominant, role in the decision, absent a finding of neglect or abuse, and the traditional presumption that the parents act in the best interests of their child should apply." *Id.*

---

[2] *Parham, Yoder*, and *Troxel* rely on this principle from *Pierce*. *See Parham*, 442 U.S. at 602; *Yoder*, 406 U.S. at 233; *Troxel*, 530 U.S. at 68–69.

Parents are not stripped of their authority to act in the best interest of their children "[s]imply because the[ir] decision … is not agreeable to a child or because it involves risks." *See Parham*, 442 U.S. at 603–04. Courts, consistent with medical and social-science literature, recognize that "[m]ost children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment." *Id.*; *see, e.g.*, Sarah-Jayne Blakemore & Trevor W. Robbins, *Decision-Making in the Adolescent Brain*, 15 Nature Neuroscience 1184 (2012) (exploring neurological basis for adolescence being "characterized by making risky decisions"); Ferdinand Schoeman, *Parental Discretion and Children's Rights: Background and Implications for Medical-Decision-Making*, 10 J. Med. & Phil. 45, 46 (1985) (children are not able to "deliberate maturely" towards their own best interests). Because a child's prefrontal cortex is undeveloped and because children lack life experience, they cannot fully appreciate the implications of their decisions. *See* Adele Diamond, *Normal Development of Prefrontal Cortex from Birth to Young Adulthood: Cognitive Functions, Anatomy, and Biochemistry*, in D. Stuss & R. Knight, eds., *Principles of Frontal Lobe Function* 466 (2002) (noting that the prefrontal cortex takes over two decades to reach full maturity).

When a school district's policies "conflict with the fundamental right of parents to raise and nurture their child," "the primacy of the parents' authority must be recognized and should yield only where the

school's action is tied to a compelling interest." *Gruenke v. Seip*, 225 F.3d 290, 305 (3d Cir. 2000). But school districts have no interest—much less a compelling one—in concealing minor students' social gender transitions from their parents.

Parents' obligation to care and provide for their minor children requires that they not be denied access to information necessary for them to perform those functions. It is quite simply impossible for parents to exercise their right and obligation to prepare their children "for obligations the state can neither supply nor hinder" when the state is hiding information that more properly belongs in "the private realm of family which the state cannot enter." *See Prince*, 321 U.S. at 166.

II. The school district's policy violates parents' fundamental right to direct the upbringing of their children.

The school district's policy provides that "school staff will use the name and pronouns that correspond to the gender identity the student consistently asserts at school." Mem. & Order, Dkt. 32 at 6. The policy gives *students* "the right" "to decide *when*, *with whom, and how much to share*" this information, such that the policy does not allow district staff to inform a student's parents that their child is struggling with gender identity or that the school is socially transitioning their child. *Id.* Thus, under the policy, students of any age can insist that their parents are kept in the dark about their transgender status—even when parents such

as Mrs. Vitsaxaki specifically and repeatedly seeks out information from staff trying to understand the source of her daughter's ongoing struggles.

A. The policy authorizes school officials to secretly make decisions about gender identity in violation of parents' constitutional rights.

The district's policy upends centuries of natural and constitutional law. The policy gives ultimate decision-making authority to children and displaces parents of their longstanding, primary role in ensuring their child's safety and well-being. In doing so, the district grants itself control over managing the child's gender dysphoria—a role it has neither the qualifications, rights, nor emotional interest in serving.

Social transitioning is not a matter of mere "decency." It is "an active intervention because it may have significant effects on the child or young person in terms of their psychological functioning."[3] The district presumably does not treat a child's depression or other mental health issues without involving parents, and it has no duty or right to keep parents in the dark about gender-related distress either. Put bluntly, the district has no knowledge or relationship with the child that warrants its usurpation of parental authority.

---

[3] *Independent Review of Gender Identity Services for Children and Young People: Interim Report* (The Cass Review), Feb. 2022, at 62, https://perma.cc/D5XP-EXAL.

Worse, the district's approach to support social transitioning lacks any solid, scientific foundation. No medical organization recommends subjecting children or adolescents to social transition without the knowledge of their parents, no doubt because of the severe and often irreversible effects of such transition. *See* Compl., Dkt. 1 ¶ 221. In fact, many medical professionals believe that this approach "can become self-reinforcing and do long term harm." Luke Berg, *How Schools' Transgender Policies Are Eroding Parents' Rights* 3 (Mar. 2022). Given the recent explosion of students dealing with gender identity issues, caution is needed. *See id.* Not only that, but existing research suggests that these feelings eventually recede for most children—that is, for those who do not transition. *See id.* And there is a spike in "detransitioners," which lends further support to caution. *See id.* (citing Elie Vandenbussche, *Detransition-Related Needs and Support: A Cross-Sectional Online Survey*, 69 J. Homosexuality 1602 (2021)). Particularly because children and adolescents are still developing judgment and maturity, parental involvement is critical in the context of gender conditions.

B. The district court erred in dismissing Mrs. Vitsaxaki's complaint and applying rational basis review to do so.

The district court erred both in applying rational basis review to Mrs. Vitsaxaki's constitutional claims and in finding that the district had shown the policy was rationally related to a government interest.

Free Exercise. While the district court found that Mrs. Vitsaxaki had plausibly alleged the existence of a sincerely held religious belief, it erred in holding that the policy was subject to rational basis review because it is neutral and generally applicable. The district court instead should have applied strict scrutiny to Mrs. Vitsaxaki's free exercise claim because she alleged in her complaint that the policy was neither neutral nor generally applicable. She alleged the district decided on a "case-by-case" basis whether to notify parents of a social transition. *See* Compl., Dkt. 1 ¶¶ 270-272. And the district has discretion as to whether it will socially transition a student who requests such action in the first place. *See id.* ¶ 199 ("the District *may* create or change unofficial records to reflect the name and gender identity that the student consistently asserts at school" (quoting policy) (emphasis added)). The district court erred by ignoring the discretionary power the district exercises under the policy. This power constitutes a "mechanism for individual exemptions," which triggers strict scrutiny. *Fulton v. City of Philadelphia*, 593 U.S. 522, 533 (2021).

The policy cannot survive strict scrutiny. Such review requires the district to show that the policy furthers a compelling government interest, and is narrowly tailored to that result. It can do neither. The interest the district asserted and the district court credited—to foster a safe learning environment—is simply not furthered by the policy. Encouraging a student's social transition and then actively hiding that

fact from the student's parents has no relationship to a safe learning environment. Likewise, the policy is not narrowly tailored to achieve a safe learning environment. There is zero basis for any argument that disclosing Jane's social transition to her mother would compromise her safety. In fact, the complaint alleges that the actions that Jane's mother took after learning of her transition have *improved* Jane's health and overall wellbeing. *See* Compl., Dkt. 1 ¶ 192. The complaint also presents evidence that social transitioning is counterproductive and carries risks of lifelong health problems. *Id.* ¶ 226-228.

Due Process. The district court ignored Mrs. Vitsaxaki's actual complaint and applied an overly narrow interpretation of this circuit's parental rights law to dismiss the due process claims. The court mischaracterized her claims as seeking to direct *how* a public school teaches her child. Mem. & Order, Dkt. 32 at 26. But her claims were aimed at the policy's denial of her rights to make educational and healthcare decisions for her daughter. Those rights are firmly established. *See* Section I. The policy served as a fig leave for the district to decide and participate in treating her daughter as a boy at school without her consent and by actively concealing that fact from her. These decisions properly belong with parents. Mrs. Vitsaxaki should be allowed to protect her rights and pursue her claims against a state entity that used deception to hide and prolong her daughter's struggles.

C. The policy is part of a trend by school districts across the country to exclude parents from social transitioning decisions.

Regrettably, the policy is neither groundbreaking nor unique. In recent years, school districts nationwide have quietly implemented similar gender transition guidelines.[4] These parental exclusion policies differ in execution—*i.e.*, whether they place students or school officials in the driver's seat—but they both relegate parents to the back seat. All such policies thus prevent parents from helping their children make crucial decisions about their identity and mental health, in direct violation of parents' fundamental rights. *Parham*, 442 U.S. at 603.

Some policies leave parental involvement to the student's discretion. These policies forbid school officials from disclosing information about a student's transgender status to parents unless the student has authorized the disclosure. Policies like this have shown up

[4] Parents Defending Education ("PDE"), a nationwide membership organization that seeks to prevent the politicization of K-12 education and to protect parental rights, has compiled a list of public school districts across the country with similar policies. *See InDoctriNation Map*, PARENTS DEFENDING EDUC., (last accessed Oct. 23, 2023) (filtering for "incidents," "public schools," and "parents rights" yields over 150 results for school policies), https://defendinged.org/map/.

in large cities like Washington, D.C.,[5] Philadelphia,[6] Chicago,[7] and Los Angeles,[8] as well as smaller cities like Eau Claire, Wisconsin.[9] And the New Jersey Department of Education has issued similar guidance to all public-school districts in the State.[10]

---

5 *See* D.C. Pub. Schs., *Transgender and Gender-Nonconforming Pol'y Guidance*, at 8 (2015) (instructing educators not to share transgender status with parents without permission from the child), https://perma.cc/G94K-YQ9C.

6 *See* Sch. Dist. of Phila., *Transgender and Gender Non-Conforming Students*, at 3 (June 16, 2016) ("School personnel should not disclose … a student's transgender identity … to others, including parents … unless the student has authorized such disclosure."), https://www.philasd.org/src/wp-content/uploads/sites/80/2017/06/252.pdf.

7 *See* Chi. Pub. Schs., *Guidelines Regarding the Support of Transgender and Gender Nonconforming Students*, at 4 (2019) (asserting that children have a right to keep their transgender status from their parents), https://perma.cc/WT5W-E52T.

8 *See* L.A. Unified Sch. Dist., Pol'y Bulletin BUL-2521.3, *Title IX Policy/Nondiscrimination Complaint Procedures*, at 18 (Aug. 14, 2020) (describing gender identity as confidential), https://perma.cc/2LLZ-5XAH.

9 *See* M.D. Kittle, *Wisconsin School District: Parents are not 'Entitled to Know' if Their Kids are Trans*, FEDERALIST (Mar. 9, 2022), https://thefederalist.com/2022/03/08/wisconsin-school-district-parents-are-not-entitled-to-know-if-their-kids-are-trans/.

10 *See* N.J. Dep't of Educ., *Transgender Student Guidance for Sch. Dists.*, at 2–3 ("A school district shall accept a student's asserted gender identity;

Other policies require school officials to determine whether it is appropriate to disclose the student's transgender status to their parents. These policies give school officials discretion to determine whether parents should be part of a student's transition plan. Policies like this have shown up in school districts in Charlotte[11] and New York,[12] as well as Hawaii's Department of Education.[13] While these policies condition parental involvement on school officials' consent, they still impair parents' fundamental right to raise their children.

---

parental consent is not required."), https://nj.gov/education/students/safety/sandp/transgender/Guidance.pdf.

11 *See* Charlotte-Mecklenburg Schs., *Supporting Transgender Students*, at 34 (June 20, 2016) (describing a case-by-case approach to involve parents in transition plans), https://perma.cc/3GAV-UHHM.

12 *See* N.Y.C. Dep't of Educ., *Guidelines to Support Transgender and Gender Expansive Students: Supporting Students* ("[S]chools [must] balance the goal of supporting the student with the requirement that parents be kept informed about their children."), https://perma.cc/RT86-YQXT.

13 *See* Haw. Dep't of Educ., *Guidance on Supports for Transgender Students*, at 5 ("[I]nitial meeting[s] may or may not include the student's parents."), https://perma.cc/ECZ6-NJGE.

The explosion of these policies appears to stem from ideologically driven advocacy groups claiming that federal law requires this result.[14] One such group, the Gay, Lesbian, and Straight Education Network (GLSEN), promotes a so-called "model" policy—similar to the district's—which falsely claims that disclosing a student's "gender identity and transgender status" without the student's consent may violate the Family Education Rights Privacy Act (FERPA). *See* GLSEN & Nat'l Ctr. for Transgender Equality, *Model Local Education Agency Policy on Transgender and Nonbinary Students*, at 4 (Rev. Oct. 2020). Even if that strained interpretation of FERPA had any merit (it doesn't), rights created by federal statute yield to those grounded in the U.S. Constitution whenever there is a conflict. *See, e.g., Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803) ("It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it."). These federal statutes—no matter how laudable their aims—cannot displace parents' longstanding right to care for their children.

---

[14] *See, e.g.*, Nat'l Educ. Ass'n, *Legal Guidance on Transgender Students' Rights*, at 19–20 (2016) (arguing that FERPA precludes sharing transgender status in most circumstances), https://perma.cc/V7U5-ZXGK; GLSEN & ACLU, Know *Your Rights: A Guide for Transgender and Gender Nonconforming Students, at* 5 (2016) ("If your school reveals [transgender status] to anyone without your permission, it could be violating federal law."), https://perma.cc/RPD4-UFJJ.

CONCLUSION

When a student considers transitioning genders, parents have a fundamental, constitutional right to not be shut out of that decision-making process. *See Troxel*, 530 U.S. at 65. Yet school districts across the country, strong-armed by ideologically driven advocacy groups, have done just that, trampling on parents' fundamental right to be informed of critical information about their child's mental health and well-being.

The district court's review of the policy here was legally flawed for the reasons described herein. More importantly, the court failed to ensure that parents' constitutional rights are respected. The state must not be allowed to usurp the role of parents at pivotal decision points in their children's lives. This Court should reverse.

Dated: June 12, 2025

Respectfully submitted,

AUSTIN KNUDSEN
Montana Attorney General

CHRISTIAN B. CORRIGAN
Solicitor General

/s/ Christian B. Corrigan
MONTANA DEPT. OF JUSTICE
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
p. 406.444.2026
christian.corrigan@mt.gov

/s/ *Anna St. John*
Joseph S. St. John
Anna St. John
ST. JOHN LAW LLC
1701 Jefferson Ave.
New Orleans, LA 70115
p. 410.212.3475
scott@stjohnlaw.com

ADDITIONAL SIGNATORIES

STEVE MARSHALL
Attorney General
State of Alabama

ANDREW BAILEY
Attorney General
State of Missouri

TREG TAYLOR
Attorney General
State of Alaska

MIKE HILGERS
Attorney General
State of Nebraska

STEVE MONTENEGRO
Speaker of the Arizona
House of Representatives

DREW WRIGLEY
Attorney General
State of North Dakota

WARREN PETERSEN
President of the
Arizona Senate

DAVE YOST
Attorney General
State of Ohio

TIM GRIFFIN
Attorney General
State of Arkansas

GENTNER DRUMMOND
Attorney General
State of Oklahoma

JAMES UTHMEIER
Attorney General
State of Florida

ALAN WILSON
Attorney General
State of South Carolina

CHRIS CARR
Attorney General
State of Georgia

MARTY JACKLEY
Attorney General
State of South Dakota

RAÚL LABRADOR
Attorney General
State of Idaho

KEN PAXTON
Attorney General
State of Texas

THEODORE E. ROKITA
Attorney General
State of Indiana

DEREK BROWN
Attorney General
State of Utah

KRIS KOBACH
Attorney General
State of Kansas

JASON MIYARES
Attorney General
State of Virginia

LIZ MURRILL
Attorney General
State of Louisiana

JOHN B. MCCUSKEY
Attorney General
State of West Virginia

LYNN FITCH
Attorney General
State of Mississippi

Certificate of Compliance with Fed. R. App. 32(a)(7)

Certificate of Compliance with Type-Volume Limitation, Typeface Requirements, and Type Style Requirements:

1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because:

This brief contains 6,269 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook font.

Executed on June 12, 2025.

/s/Christian B. Corrigan

Certificate of Service

I hereby certify that on June 12, 2025, I electronically filed the foregoing with the Clerk of the United States Court of Appeals for the Second Circuit using the CM/ECF system, which will provide notification of such filing to all who are ECF-registered filers.

/s/ Christian B. Corrigan